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DEPARTMENT OF TELECOMMUNICATIONS AND CABLE**

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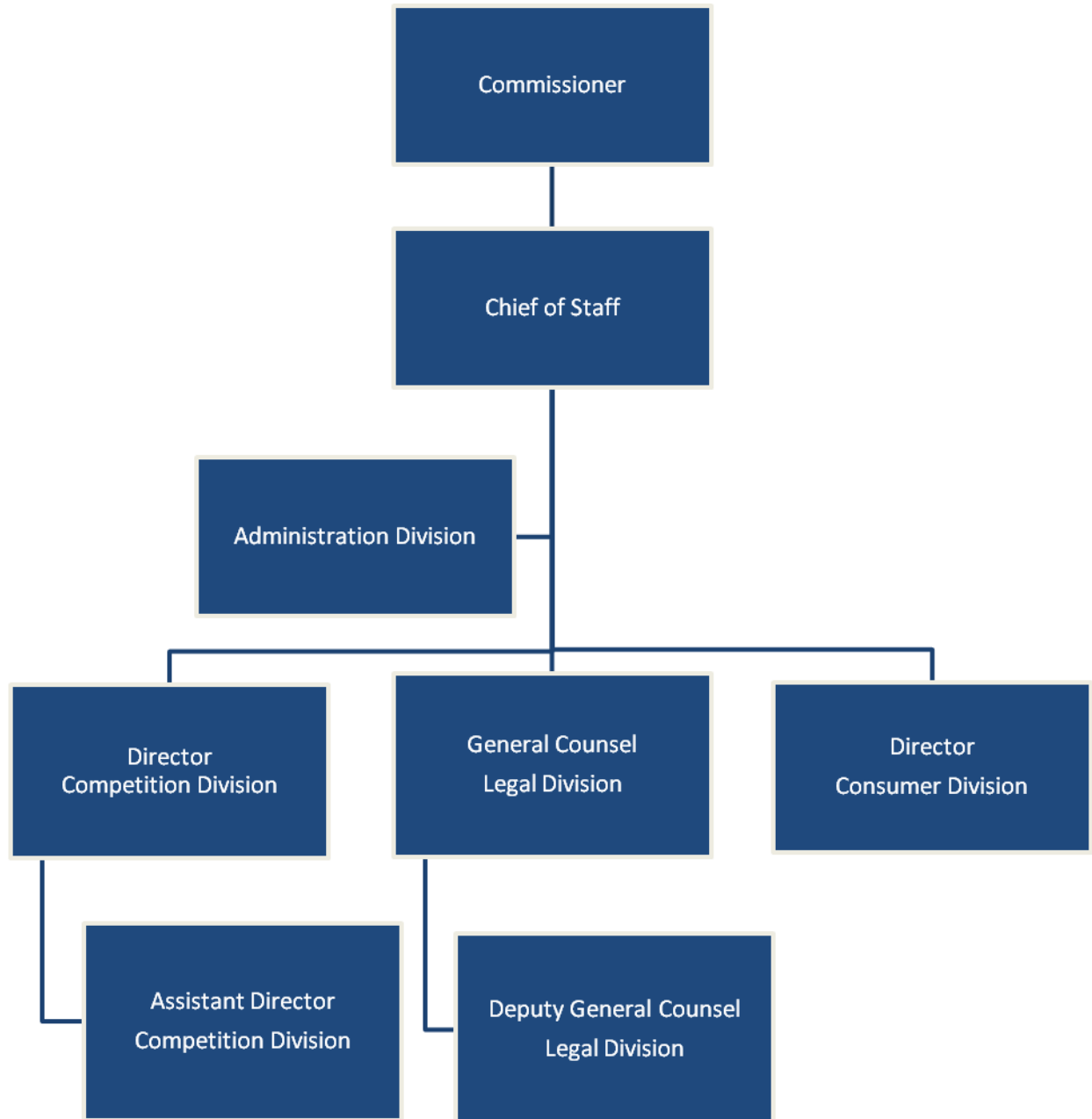
**Massachusetts Department of Telecommunications & Cable  
2010 Annual Report**

## Table of Contents

<b>Organizational Chart.....</b>	<b>1</b>
<b>Background.....</b>	<b>2</b>
<b>Administration Division.....</b>	<b>10</b>
<b>Competition Division .....</b>	<b>11</b>
<b>Legal Division.....</b>	<b>15</b>
<b>Consumer Division .....</b>	<b>17</b>
<b>Appendix A Department Orders Issued in 2010 .....</b>	<b>21</b>
<b>Appendix B 2010 Consumer Division Telecommunications &amp; Cable Statistics.....</b>	<b>24</b>
<b>Appendix C 2010 Consumer Division Energy Statistics .....</b>	<b>27</b>
<b>Appendix D 2010 Department FCC Filings .....</b>	<b>29</b>

# Organizational Chart

## Department of Telecommunications and Cable



## **Background**

The Department of Telecommunications and Cable ("Department") is funded through an annual assessment by telecommunications and cable companies as authorized by the annual General Appropriations Act, line item 7006-0071 and pursuant to Chapter 25C, section 7 of the Massachusetts General Laws ("M.G.L.") and Article 87 of the Acts of 2007. The Department's operating budget for FY2010 was \$2.68 million. Any unexpended balances are credited to the following year's industry assessment.

The telecommunications industry over which the Department has jurisdiction is made up of common carriers, including local exchange carriers, interexchange carriers, operator service providers, and pay-telephone companies. The cable industry in Massachusetts is comprised of 10 cable television providers serving over 2.1 million video subscribers in 310 of the Commonwealth's 351 cities and towns.

The Department's mission is to: (1) regulate the telecommunications and cable industries in accordance with the statutory obligations imposed by the Commonwealth of Massachusetts and the federal government; (2) ensure that consumers receive high quality communications at just and reasonable rates; (3) promote sustainable competition which will increase consumer welfare for all Massachusetts residents; (4) maintain and enforce consumer protections, consistent with the public interest, particularly where market forces alone are not sufficient to do so, including investigating and responding to inquiries and complaints from consumers and carriers; and (5) provide expert input into the development of telecommunications and cable related policies for the State.

The Department's general responsibilities are:

### **Promote Competition**

- Revise existing policies and develop new policies in response to new technologies and market conditions;
- Collect and compile data on the status of competition in the communications industries in Massachusetts, and prepare summary reports of the findings;
- Develop and implement policies that promote competition in areas of the state where it lags;
- Develop and enforce policies to promote wholesale and retail competition; and
- Implement competition-related rule changes consistent with state and federal law.

## **Protect Consumers**

- Establish and enforce basic consumer protections (e.g., enforce the Department's billing and termination requirements, including elderly disconnect rules, and chat line blocking rules);
- In coordination with the State 911 Department, ensure access to quality telecommunications services for persons with disabilities;
- Monitor and enforce low-income discount programs (Lifeline/Linkup) and conduct outreach to promote subscribership;
- Enforce consumer privacy laws;
- Investigate the need for "public interest" payphones, and ensure that payphone providers comply with labeling and rate information requirements to prevent price gouging;
- Adjudicate "slamming" complaints, complaints between residential and business customers and carriers, and service quality complaints from various customer groups and municipalities;

## **Information/Advocacy Role**

- Analyze major federal legislative and regulatory decisions to evaluate their impact on state regulation of the telecommunications and cable industries, and when appropriate, advocate on behalf of Massachusetts consumers before the Federal Communications Commission ("FCC") and Congress;
- Explain Department regulations and policies; and provide other information as requested to consumers, carriers, public officials, the Legislature, the Administration, and others;
- Monitor and evaluate proposed state legislation, and provide recommendations to the Administration;
- Participate in regional and national regulatory associations to ensure that Massachusetts interests are represented; and
- Comply with periodic or annual FCC reporting requirements.

## **Telecommunications Regulation**

### **Regulatory Framework**

The federal Telecommunications Act of 1996 (“Telecom Act”) led to major changes in the telecommunications industry and how it is regulated. The increase in competition, spurred in large part by technological innovation, has required that the Department adjust its regulations to reflect changes in market conditions and relax its regulations where market forces are sufficient to protect consumer interests, thereby ensuring that the Department continues to promote competition. However, where market forces are not sufficient to safeguard consumer interests, the Department has continued to enforce necessary protections.

The Department has jurisdiction over telecommunications services that originate and terminate within or between each of Massachusetts’ two federally-designated “Local Access and Transport Areas” (“LATAs”).<sup>1</sup> The FCC generally regulates interstate and international services.

### **Department Responsibilities**

The Department’s primary telecommunications-related responsibilities are:

#### **Wholesale Regulation**

- Set rates at which carriers can lease parts of each other’s networks - this applies in particular to incumbent local exchange carriers’ networks;<sup>2</sup>
- Establish the terms and conditions under which facilities-based carriers interconnect their networks, exchange traffic and generally conduct their business relationships;
- Resolve disputes between competing carriers over wholesale rates and service issues;
- Establish and enforce wholesale service quality standards for Verizon so that it does not discriminate against competing carriers in providing wholesale services;
- Set rates at which competitors can resell Verizon’s retail services; and
- Ensure that competing carriers do not create barriers to consumer choice (e.g., enforce number porting requirements).

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<sup>1</sup> The Western Massachusetts LATA consists of the 413 area code; all other area codes in the State fall under the Eastern Massachusetts LATA.

<sup>2</sup> In Massachusetts, the State’s primary incumbent local exchange carrier is Verizon Massachusetts.

- Enforce phone number allocation rules (i.e., monitor use of telephone numbers by carriers and promote number conservation to ensure an adequate supply of telephone numbers for the industry and to prevent the need for new area codes); and
- In coordination with the Department of Public Utilities, ensure access to rights-of-ways for all carriers by establishing and enforcing rules concerning the rates and access to utility poles and conduits.

### **Retail Regulation**

- Develop and enforce policies to promote retail competition, including policies that relax regulation where market forces are sufficient to protect consumer interests;
- Regulate certain Verizon retail services for which it still retains market power;
- Regulate rates, services, and practices of four small rural incumbent local phone companies that are considered to have market power in their service territories;
- Set rates and monitor service quality for inmate calling services, which are considered “monopoly” services; and
- Ensure that reasonable service quality is provided by all carriers.

### **Public Safety/Network Reliability Regulation**

- Help to ensure adequate funding of the E-911 network (i.e., oversee the cost of the network and establish the retail surcharge to fund the network) and to provide oversight of the State 911 Department’s expenditures, pursuant to Chapter 223 of the Acts of 2008;
- Facilitate quick resolution of wholesale and retail service outages by working closely with carriers;
- Enforce Verizon’s major extended service outage rules, which are intended to address prolonged outages affecting 200 or more customers;
- Periodically review for adequacy the carrier network reliability plans; and
- Enforce Verizon’s central office collocations security rules.

## **Market Entry and Exit Regulation**

- Review new registrations from companies seeking to provide telecommunications services in Massachusetts;
- Review individual tariff filings that would implement new service offerings or change the rates, terms or conditions of existing service offerings;
- Enforce entry requirements to ensure that no carriers are operating illegally in Massachusetts;
- Facilitate a smooth, orderly process when carriers discontinue services or exit the market entirely to prevent disruption of service to customers;
- Approve transfers of ownership and control for certain carriers; and
- Review and approve applications for “eligible telecommunications carrier” (“ETC”) status (ETCs must meet certain service obligations to be eligible to receive federal universal service funds).

## **Retail Services – Market Entry**

To reduce barriers to market entry and encourage competition for telecommunications service in Massachusetts, the Department has a streamlined registration process for companies wishing to do business as carriers within the State. Previously, the Department conducted an investigation into the financial, managerial, and technical abilities of a carrier to offer service. The Department permits carriers to offer service based simply on the submission of a Statement of Business Operations and a tariff. The streamlined entry process permits the Department to devote greater resources and staff time to other responsibilities.

## **Wholesale Services – Market Entry**

Apart from building their own facilities to serve customers, carriers that wish to compete in the retail telecommunications market have two modes of entry available to them. One of these is to lease unbundled network elements from the “incumbent” local exchange carrier (“ILEC”)<sup>3</sup> or another carrier and provide service over this leased network. Verizon is the ILEC for all but four towns in Massachusetts. The Department has authority over Verizon’s wholesale provision of unbundled network elements to ensure that they are provided in a non-discriminatory manner, and regulates the rates at which they are leased.

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<sup>3</sup> The ILEC is the entity that owned the network prior to the introduction of competition.



The other way a carrier can enter the market is to purchase a service from another carrier (usually Verizon) at a predetermined wholesale discount rate, then brand the service with its own name and resell it. The Department develops the wholesale discount rate for Verizon pursuant to FCC methodology.

### **Payphone Providers**

In addition to Verizon, many companies own and operate payphones in Massachusetts. In a 1986 Order, the Department held that all payphones must have labels clearly identifying the owner/operator of the phone, and must provide free access to 911 and directory assistance. The Department ensures that Verizon provides the lines necessary to provide payphone service on a non-discriminatory basis to all companies seeking to offer the service. During 2010, the Department registered 1 new payphone provider. Payphone providers are not required to file tariffs.

### **Enforcement of Service Quality**

The Department adopted a Service Quality Plan for Verizon, consisting of twelve service measures in the categories of Installation Service, Maintenance Service, and Service Response. Verizon reports its performance on each of the measures to the Department on a monthly basis. If Verizon's performance falls below the Department's threshold, Verizon pays a penalty in the form of a refund to all residential and business customers. Verizon's service quality is also evaluated at the local level when the Department receives a formal complaint from city or town officials or customers. In 2009, after receiving several complaints from towns in Western Massachusetts, the Department opened a proceeding to investigate Verizon's service quality in the Western Massachusetts municipalities throughout Berkshire, Franklin, Hampden, and Hampshire counties. During 2010, the Department conducted six evidentiary hearings in connection with this investigation. In February 2011, the Department approved a settlement agreement submitted by Verizon and other parties to the case. As part of the settlement agreement, Verizon is assessing deficiencies of its wireline infrastructure and performing related repair work in most rural communities in Western Massachusetts to improve landline telephone service quality. The settlement agreement also subjects Verizon to additional reporting obligations and monitoring by the Department. By continuing to monitor Verizon's quality of service, the Department ensures that Verizon, as the dominant local exchange carrier in Massachusetts, allocates sufficient resources for the maintenance of quality service to all customers, regardless of the level of competition the company faces in a particular market.

## **2010 Telecommunications-Related Accomplishments**

During 2010, the Department provided continued support to the development of Governor Patrick's Broadband Initiative. This support included assistance to the Massachusetts Broadband Institute ("MBI") and its work to develop a solicitation for proposals from private companies to bring broadband to all unserved and underserved areas of the State through the \$40 million Massachusetts Broadband Incentive Fund. In addition, the Department provided support and guidance to MBI in its mapping projects, FCC comments, and grant proposals.

### **Cable Regulation**

#### **Regulatory Framework**

Cable television is regulated at the local, state, and federal level. The Department regulates cable services principally pursuant to its enabling legislation, M.G.L. c. 166A, and implementing regulations at 207 C.M.R. § 1.00 et seq. In recent years, new entrants have emerged in the marketplace, such as competitive overbuilders and municipally-owned companies. Principal among these competitive providers are telephone companies that have begun offering video service, as well as high-speed internet service, in competition with incumbent cable operators. The cable industry is now a \$2.1 billion industry in Massachusetts providing service in 310 of the Commonwealth's cities and towns.

#### **Department Responsibilities**

The Department's primary cable-related responsibilities are:

- Oversight of cable television franchising, franchise renewal, and the transfer of cable franchises within the Commonwealth;
- Establish basic service tier programming, equipment, and installation rates for communities in Massachusetts that have requested rate regulation;
- Enforce consumer protection standards; and
- Collect, compile, and maintain statistical data from cable providers on, among other things, consumer complaints, rates, terms and conditions, market share, and financial performance.

#### **Oversight of Municipal Cable Franchising**

In Massachusetts, local municipalities act as the issuing authorities and negotiate and grant cable licenses, while the Department retains oversight authority in licensing matters. The Department conducts an extensive educational program for communities involved in the licensing process, regarding the applicable substantive and procedural requirements at the local, state, and federal levels.

When licensing disputes arise at the local level, the Department serves as the appellate body.

### **Rate Regulation**

The Department regulates subscribers' rates for basic service tier programming, equipment, and installation in those Massachusetts communities that: (1) have requested rate regulation; and (2) do not have effective competition, as determined by the FCC. The Department reviews the proposed basic service tier rates to determine whether such rates are just and reasonable and in compliance with applicable federal law. Pursuant to federal law, the Department does not regulate rates for expanded cable or premium services.

In 2010, the Department reviewed basic service tier programming, equipment, and installation rates in the 187 rate-regulated communities of Massachusetts. The Department issued several rate orders, with respect to basic service tier programming, installation, and equipment rates applicable in these municipalities.

### **Consumer Protection and Education**

The Department investigates and resolves individual consumer complaints, either by informal negotiation between the consumer and the cable operator or by formal adjudicatory proceedings. The Department also tracks patterns of complaints in order to identify and resolve more widespread problems.

The Department has regulations designed to afford consumer protections to cable subscribers, particularly with respect to billing and termination of service. The Department requires each cable operator to make annual filings to ensure compliance with these consumer protection regulations. Through dedicated telephone lines, published consumer information, fact sheets, and a consumer-friendly website, the Department serves as a source of information for consumers seeking to understand the options available to them, particularly as competition among cable operators increases across the Commonwealth.

### **2010 Cable-Related Accomplishments**

Cable-related accomplishments in calendar year 2010 include:

- Basic Tier Programming and Equipment Rates

As part of its regular review, the Department reviewed basic service tier programming and equipment rates for most rate-regulated Massachusetts communities in 2010. These reviews resulted in refunds or credits to Massachusetts subscribers exceeding \$22,000.

- Initial Licensing by Competitive Cable Provider

In 2010, 5 Massachusetts communities granted an initial license to a Competitive Cable Provider. As of the close of 2010, 115 communities are being served by an Incumbent Cable Provider and at least one Competitive Cable Provider.

## **Administration Division**

### **Overview**

The Administration Division provides administrative support to the Department.

### **Division Responsibilities**

#### **Finance**

The Division handles budget preparation and controls, purchasing, accounts receivable and accounts payable, payroll, and other administrative financial services. The Department's budget for Fiscal Year 2010 was \$2.68 million. Revenue collected during that same period was \$4.97 million of which \$1.75 million was returned to the General Fund from revenue sources that include telecommunications and cable filing fees.

#### **Human Resources**

In conjunction with the Office of Consumer Affairs and Business Regulation, the Division is responsible for payroll actions and human resource management.

#### **Legal Support**

The Division is also responsible for publishing notices of all Department public hearings. In 2010, the Department conducted seventeen (17) public hearings. Thirteen (13) of these hearings were evidentiary hearings. The Division also processes all docket filings and Orders issued by the Department including management of record retention. Staff issued thirty-two (32) decisions as follows: twelve (12) final orders; nine (9) interlocutory orders; and eleven (11) hearing officer rulings in the Department's dockets in 2010. Additionally, staff responded to hundreds of requests for information regarding docketed matters.

#### **Information Technology**

Division staff oversees the operation of the information technology ("IT") systems, the telephone system, and the website. In 2010, IT staff completed infrastructure upgrades to the website and developed databases that facilitate management and tracking of tariffs and annual returns.

## **Communications**

Division staff drafts consumer advisories on topical issues and develops educational materials for public dissemination. Staff also responds to substantive consumer inquiries.

## **Competition Division**

### **Overview**

Pursuant to Chapter 19 of the Acts of 2007, the Department's predecessor agency, the Department of Telecommunications and Energy, ceased to exist. Jurisdiction over telecommunications and cable matters was placed in the newly-established Department. All telecommunications and cable authority and cases were initially transferred to the Department's Telecommunications and Cable Television Divisions, respectively.<sup>4</sup>

Shortly thereafter, the Department merged the separate Cable and Telecommunications Divisions to form the Competition Division, in order to increase efficiencies by taking advantage of synergies created by convergence in these industries.

The Competition Division provides technical and analytical support to the Commissioner of the Department, as well as to the Department's Legal and Consumer Divisions and other Administration officials, in the regulation of the telecommunications and cable industries in Massachusetts. Through its various responsibilities, the Competition Division supports the Department's mission to: (1) regulate the telecommunications and cable industries in accordance with the statutory obligations imposed by the Commonwealth of Massachusetts and the federal government; (2) ensure that consumers receive high quality communications at just and reasonable rates; (3) promote sustainable competition which will increase consumer welfare for all Massachusetts residents; (4) maintain and enforce consumer protections, consistent with the public interest, particularly where market forces alone are not sufficient to do so, including investigating and responding to inquiries and complaints from consumers and carriers; and (5) provide expert input into the development of telecommunications- and cable-related policies for the State.

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<sup>4</sup> In 1971, the Legislature established the Massachusetts Community Antenna Television Commission ("Cable Commission"). In 1997, the Cable Commission was merged into the Department of Telecommunications and Energy as the Cable Television Division.

## **Division Responsibilities**

### **Development of Policies that Promote Sustainable Competition and Conform the Level and Type of Regulation to Market Conditions**

In conjunction with the Legal Division, Competition Division staff conducts formal and informal policy investigations to ensure that consumers of telecommunications and cable services continue to reap the benefits of competition and that such competition accrues to all residents of Massachusetts. In addition, Competition Division staff safeguards consumers by implementing new regulatory policies to ensure that the rates, terms, and conditions of telecommunications and cable services are just and reasonable, where market forces alone cannot do so.

### **Analysis and Implementation of Major Federal Regulatory Changes**

Decisions of the FCC, Congress, and state and federal courts affect the structure of the telecommunications and cable industries and the Department's authority to regulate those services. Competition Division staff monitors large volumes of relevant case law and actions from other agencies and jurisdictions, both federal and state, to keep abreast of major issues that may influence the provision of telecommunications and cable services within Massachusetts. Competition Division staff also monitors broadband-related activities, since it is increasingly becoming the pipeline by which telecommunications and cable services are being provided to Massachusetts consumers and is a major focus of many FCC reform proceedings.

In 2010, Competition Division staff devoted substantial time to monitoring and offering assistance in certain actions related to the broadband provisions of the American Recovery and Reinvestment Act ("Recovery Act") signed into law by President Obama in February 2009. One provision of the Recovery Act provided the Department of Commerce's National Telecommunications and Information Administration ("NTIA") and the U.S. Department of Agriculture's Rural Utilities Service ("RUS") with \$7.2 billion to expand access to broadband services in the United States. NTIA's program, the Broadband Technology Opportunities Program ("BTOP"), provided grants in 2010 to application winners across the country for broadband-related programs and deployment. Several Massachusetts entities were awarded monies under the BTOP, including the MBI's *MassBroadband 123* project for broadband deployment in Western Massachusetts. Another provision of the Recovery Act provided funding to the NTIA relating to the Broadband Data Improvement Act of 2008 for collection and mapping of broadband availability and infrastructure information across the country. The NTIA's resulting program, entitled the State Broadband Data and Development ("SBDD") Program, awarded funding to the MBI, the state's designated broadband mapping entity, to collect and map broadband availability

and infrastructure for the Commonwealth. Competition Division staff provided technical and other assistance to MBI staff during this exciting time.

Competition Division staff also devoted substantial time towards the FCC's development and implementation of the National Broadband Plan ("Plan"). The Recovery Act tasked the FCC to develop a National Broadband Plan "to ensure that all people of the United States have access to broadband capability," and a "strategy for achieving affordability of such service and maximum utilization of broadband infrastructure." The FCC released the Plan on March 16, 2010, and has since released numerous items based on Plan recommendations, including those relating to comprehensive reform of the Universal Service Fund and intercarrier compensation. Competition Division staff assisted the Department in identifying and participating in National Broadband Plan related proceedings and activities that will affect the Massachusetts consumer.

The Competition Division also monitors all new telecommunications, cable, and broadband-related dockets at the FCC to determine whether to participate in those proceedings as an advocate on behalf of Massachusetts consumers and/or to keep the Commissioner informed of the impact of those proceedings on Department policies. In 2010, the Competition Division actively monitored over 30 FCC proceedings and, with the assistance of Legal Division staff, as needed, submitted 16 sets of comments and ex parte filings in several proceedings of particular importance to Massachusetts. A list of these filings and their summaries are provided as Appendix D to this Report.

### **Review of New Registrations and of Original and Amended Tariff Filings**

Companies wishing to do business and provide telecommunications services in Massachusetts must file a Statement of Business Operations and a tariff with the Department. The statement includes a general description of the services to be offered by the carrier; contact information for customers who need to reach the carrier with questions or complaints; and a statement that the company has made all appropriate federal and state income tax filings and paid all income taxes. During 2010, the Competition Division handled filings from 18 new carriers.

In 2010, the Competition Division also reviewed an average of approximately 45 tariff filings per month, including new tariffs and amendments to existing tariffs. Competitive carriers are free to determine prices and service offerings based on what the market will bear (“market-based pricing”). The Competition Division reviews competitive carriers’ tariffs to make sure that they do not contain any terms or provisions that are in violation of Department policy (e.g., a carrier cannot offer service on the condition that a customer agrees not to contest any charges), but otherwise generally allows new tariffs to become effective as filed. Because Verizon is the “dominant” incumbent local exchange carrier, its tariffs receive greater scrutiny than those of competitive local exchange carriers (“CLECs”), although most of Verizon’s rates are subject to market-based pricing.

### **Enforcement - General**

The Competition Division, in cooperation with the Legal Division, enforces a wide variety of laws, regulations, and policies. In 2010, Competition Division staff continued to assist Legal Division staff as technical analysts in Department enforcement proceedings, both formal and informal. More specifically, the Competition Division continued to ensure that telecommunications and cable providers were complying with state statutes, rules, Department orders, and all other regulatory requirements. For example, the Competition Division conducted enforcement actions against carriers operating without Department approval. The Department’s methods for ensuring compliance include mass mailings notifying the industry of Department rules and regulations; issuing Notices of Probable Violation (“NOPVs”); opening investigations; issuing Orders to cease and desist; and referring violators to the Attorney General’s Office for prosecution.

### **Market Monitoring and Reporting Function: Massachusetts Competition Report**

The evolution of the telecommunications and cable industries in Massachusetts has resulted in many new telecommunications service providers, new technologies, such as fixed VoIP telephone service, and a plethora of new service offerings. In addition, the competitive landscape is constantly changing, with new types of competitors and individual companies taking on a greater or lesser role in the marketplace each year. Because of the changing nature of the telecommunications and cable industries, the Competition Division analyzes new technologies and market developments in order to determine their impact on consumers and the competitive marketplace. As the culmination of a new Market Monitoring and Reporting Function established in 2007, the Competition Division, with assistance from the Legal, Consumer, and Administration Divisions, has completed a comprehensive Competition Report that examines the state of competition from 2005 through 2008 in the Commonwealth. The initial Competition Report, which includes an Executive Summary, a main Report, and



appendices, was issued February 12, 2010, and will be updated from time to time.

### **Consumer Education and Public Information**

The Competition Division devotes substantial staff time to explaining the Department's regulations and policies to potential and existing providers of telecommunications and cable services, local and state officials, state and federal legislators, other Massachusetts agencies, the FCC and other state public utility commissions, and various other constituencies. Staff also devotes significant time to consumer inquiries and refers consumers to the Consumer Division for additional assistance. From time to time, the Department requires telecommunications carriers to develop customer education materials explaining major changes in the provision of services. The Competition Division reviews these education materials for technical accuracy. As needed, staff develops educational materials in response to industry changes, Consumer Division requests, or Department Orders.

## **Legal Division**

### **Overview**

The Legal Division staff serves as the chief legal and policy advisor to the Commissioner and provides legal support to all Divisions of the Department.

### **Division Responsibilities**

#### **Formal Adjudication**

The Legal Division's primary duty is presiding over adjudicatory proceedings conducted under the Massachusetts Administrative Procedures Act (M.G.L. c. 30A) and the Department's procedural regulations (220 C.M.R. § 1.00 et seq.). During 2010, the Legal Division participated in the issuance of 12 Final Orders. A list of the Orders issued is attached as Appendix A. Adjudications are the formal determination of parties' rights through a quasi-judicial process. All parties – both the party filing the action and any intervenors – are entitled to due process safeguards, meaning that the parties are entitled to adequate notice and the opportunity to be heard. Parties to the action have the right to present evidence, cross-examine witnesses, and receive a written decision from the Department. Pursuant to M.G.L. c. 25C, § 4, the Commissioner of the Department may designate an employee of the Department to act as "Presiding Officer" at Department hearings. Adjudicatory proceedings vary in complexity and may be divided into categories that include:

- Service quality issues;
- Ratemaking including cable rate and telecommunications tariff orders;
- “Slamming” (unauthorized switch of a consumer’s telecommunications service);
- Interconnection disputes between telecommunications carriers;
- Certification of telecommunications carriers to do business within the Commonwealth; and
- Formal Consumer Adjudications

In conducting a formal adjudicatory proceeding, the Department generally holds two types of hearings: (1) a public hearing, and (2) an evidentiary hearing. Public hearings are publicized throughout the provider's service territory. In certain types of cases, public hearings are conducted in a provider's service territory. Public hearings are transcribed by a stenographer. If conducted in a provider's service territory, public hearings are typically conducted during the evening in an easily accessible public building such as the Town Hall, and are overseen by a Presiding Officer. The public hearings afford local consumers the opportunity to learn more about a rate request, offer their input about the pending case, and comment on the practices of the provider. Residential and business customers are a valuable source of information to the Department in developing a case record.

Evidentiary hearings are conducted in a courtroom setting in the Department's Boston offices. These proceedings are also transcribed by a stenographer. A hearing officer presides over evidentiary hearings, with the active participation of the Department's technical staff. The technical and legal staffs participate by questioning witnesses to ensure that the record is accurate and complete.

While the adjudicatory process does not require adherence to all formal rules of evidence, the evidentiary hearing process follows many rules of civil procedure, and parties are typically represented by counsel.

Evidentiary hearings afford intervenors the opportunity to question witnesses. In many cases, the Attorney General of the Commonwealth is an intervenor. Other intervenors may include public interest organizations and local consumer, business, or neighborhood groups. Sometimes intervenors put on a direct case with witnesses of their own. Based on the evidence in the record, the Department issues a Final Order at the conclusion of each adjudicatory proceeding. Pursuant to M.G.L. c. 25, § 5, the Department's Final Order is appealable directly to the Massachusetts Supreme Judicial Court without intermediate appellate review. In certain circumstances, Department Orders may also be appealed to the Federal District Court or the FCC.

### **Other Types of Adjudication**

## **Requests for Advisory Ruling**

The Department is sometimes called upon to issue advisory rulings with respect to the applicability of any statute or regulation enforced or administered by the Department. The Department has discretion to decline a request for an advisory ruling. See M.G.L. c. 30A, § 8; 220 C.M.R. § 2.08.44.

## **Rulemakings**

The Department conducts rulemakings pursuant to M.G.L. c. 30A, §§ 4-10 and 220 C.M.R. § 2.00, to adopt, amend or repeal regulations pertaining to the activities of all industries the Department is charged by statute with regulating. A rulemaking proceeding may involve simple procedural regulations or may address complex regulatory issues. The Department is required to provide public notice of a proposed rulemaking and to allow an opportunity for public comment. After consideration of the public comment, the Department may issue final regulations. Any final regulation must be published in the Code of Massachusetts Regulations.

## **Consumer Division**

### **Overview**

The Consumer Division's primary responsibilities include enforcing and monitoring compliance with Massachusetts laws and Department regulations and policies to protect consumers of telecommunications and cable services. Hundreds of companies fall within the scope of the Consumer Division's regulatory authority, with the largest number in the telecommunications industry.

Prior to September 2009, the Consumer Division also handled energy-related issues on behalf of the Department of Public Utilities ("DPU"). However, in September 2009, the Division ceased its handling of those issues, which are now referred to the DPU. See Attachment B for a breakdown of the Consumer Division's telecommunications, cable related statistics, and see Attachment C for energy-related statistics.

## **Division Responsibilities**

### **Respond to Consumer Inquiries**

The Consumer Division conducts complaint investigations, responds to inquiries, and participates in the critical role of informing and educating consumers about various technological changes affecting their telecommunications and cable services. The Consumer Division's most important duty is to respond to the roughly 100 contacts it receives daily concerning regulated companies.

Consumers may contact the Division by telephone, mail, email, and fax or by visiting the office, although the vast majority of consumer contacts are made by telephone. Contacts to the Consumer Division are further categorized as either inquiries or referrals, for which we provide information, or complaints which we investigate as cases that require direct contact with consumers' service provider.

The Consumer Division operates a call management telephone system allowing consumers to receive personal and prompt attention by staff to address inquiries and complaints, while also permitting for the option of automated voice response assistance to those consumers who initially wish to speak directly with their company. The call management system assists with making Consumer Division specialists more readily available to those callers requiring Consumer Division expertise. It also allows for a menu recorded in Spanish for those callers that wish to speak to a representative in their native language.

The Consumer Division receives a number of contacts that the Division classifies as "unregulated matters." These contacts typically consist of miscellaneous issues that are either unassociated with a particular company or involve non-regulated issues or entities outside of the Division's jurisdiction. Examples of such "unregulated matters" include contacts relating to wireless, satellite, internet, propane gas, and oil companies and/or services.

### **Investigate and Resolve Consumer Complaints**

The majority of complaints received in the Consumer Division concern billing disputes, or quality of service allegations. In cases where the company is found to be at fault, the Consumer Division will order the company to correct the problem and make any necessary refunds.

Every complaint opened by the Consumer Division must be resolved before it can be closed. If the residential consumer or the service provider is not satisfied with the investigator's resolution of a complaint, either party may request an informal hearing within the Consumer Division. Parties dissatisfied with the informal written decision may request a formal adjudicatory hearing conducted by a hearing officer in the Department's Legal Division.

The unauthorized switching of a consumer's telephone service provider is known as "slamming" and is a violation of the law. Companies that engage in slamming may be subject to a fine. The Consumer Division enforces both federal and state laws prohibiting "slamming". If the Department determines that an unauthorized switch has occurred, consumers will receive a refund of any unauthorized charges that they paid. Under Massachusetts law, consumers must bring telephone service slamming complaints within 90 days.

### **Advise the Department**

The Consumer Division alerts the Department to important consumer issues including significant complaint trends and new company practices which may impact consumers. Recent complaints about deceptive marketing and advertising practices of promotional offers have caused the Department to examine more closely the full disclosure and notice requirements. Also, the Division evaluates existing billing and termination rules for residential telephone consumers to better assist with customer service standards for telecommunications, cable, and emerging technologies.

### **Review Bills and Notices**

The Consumer Division reviews certain telecommunication and cable company billing material and customer notices to ensure that they provide consumers with clear and accurate information.

### **Provide Consumer Education**

The Department's website is regularly updated to provide consumers with information about significant complaint trends, (examples include Cramming, Slamming, Spoofing, and Lifeline), to educate the public and protect consumers against scams, unauthorized charges or unfair billing practices. Also, the Consumer Division fields many calls from consumers requesting information or applications about Lifeline/Linkup program to obtain a discount on their landline or wireless telephone service.

### **Compile Statistics**

The Consumer Division provides statistical information to the Department, industry-related companies, government representatives and the media. The statistical complaint data compiled by the Consumer Division provides an important basis for determining whether fines should be levied against a company for failure to meet required service quality benchmarks. Statistical

complaint data may also provide evidence of fraud or unfair trade practices, and if so this information would be shared with the state Attorney General's Office.

## **2010 Telecommunications and Cable Accomplishments**

- Responded to 22,459 telecommunication and cable inquiries;
- Investigated 3,035 telecommunication and cable complaints;
- Authorized \$179,194.27 in telecommunication and cable consumer refunds;
- Monitored complaint trends and advised the Department on important consumer issues;
- Approved various bill notices and billing inserts;
- Provided consumer education and outreach forums to promote awareness of Lifeline and Link Up discounted telephone programs, and produced Lifeline brochures for mass distribution;
- Created and distributed Cable Service Buying Guide to assist consumers to understand making purchases for these services; and
- Compiled statistics for reporting and informational purposes.
- Participated in Lifeline/Link Up Awareness Week events in September 2010, including outreach to Brockton, Holyoke, Boston, Worcester.

The Consumer Division assisted consumers with energy-related matters by referring them to the DPU or directly to the appropriate utility company.

- Responded to 2,759 energy related contacts for the year;

Additionally, the Consumer Division assisted consumers with issues that are outside of the Department's jurisdiction (e.g., wireless, satellite television, etc.) by contacting their company to inform and/or resolve the issue.

- Responded to 165 contacts for the year;
- Investigated 233 complaints for the year; and
- Authorized \$2,853.47 consumer refunds for the year.

Note: The Consumer Division's contact numbers for the year include calls received that were transferred directly to companies through the Department's automated telephone software. Through this software, callers are directly transferred to a utility company or a telecommunications or cable provider of their choice simply by speaking the name of the company they wish to contact. In 2010, approximately 20,237 consumers were re-directed to the appropriate company for assistance.

## Appendix A

### Department Orders Issued in 2010

Docket No.	Caption	Date Order Issued	Date Closed
09-3	Investigation by the Department of Telecommunications and Cable on its own motion as to the propriety of the rates and charges set forth in the tariff filed by Verizon New England, Inc. d/b/a Verizon Massachusetts with the Department on September 8, 2009, for effect December 8, 2009, as to a proposed new rate element identified as "VZ Property Tax Recovery Charge" for all residential and business customers subscribing to services that are subject to market-based pricing.	10/7/2009	1/19/2010
09-4	Investigation by the Department of Telecommunications and Cable on its own motion as to the propriety of the rates and charges set forth in the tariff filed by Verizon New England, Inc. d/b/a Verizon Massachusetts with the Department on September 8, 2009, for effect December 8, 2009, for a proposed new rate element identified as a "VZ Property Tax Recovery Charge" on customers subscribing to residential basic services, and treated as an "exogenous event" under Verizon's Alternative Regulation Plan.	10/7/2009	1/19/2010
09-9	TracFone Wireless, Inc., Annual Verification of SafeLink Wireless Lifeline Subscribers.	6/30/2010	7/20/2010
09-7	Cox Communications Cable Rate Proceeding for the town of Holland, MA which is subject to cable rate regulation.	9/13/2010	10/3/2010
10-4	Heimdall, Inc d/b/a Megatron Data Syst. v. Verizon -- Heimdall Inc. v. Verizon Corporation Call for compensation for illegal theft of corporate information and unfair business practices.	Case Withdrawn	10/13/2010

Docket No.	Caption	Date Order Issued	Date Closed
09-5	Petition of Charter Communications to establish and adjust the basic service tier programming, equipment and installation rates for the communities served by Charter that are currently subject to rate regulation.	10/7/2010	10/27/2010
10-6	TracFone Wireless, Inc., Annual Verification of SafeLink Wireless Lifeline Subscribers.	10/7/2010	11/18/2010
10-SL-2	Complaint of Alethia & Errol Hinds, filed with the Department of Telecommunications and Cable pursuant to G. L. c. 93, §§ 108 et seq., alleging an unauthorized switch of local, local toll, and long-distance service provider to Cordia Communications Corporation.	Case Settled	11/29/2010
09-6	Comcast Communications LLC Cable Rate Proceeding for Communities Served that are Subject to Rate Regulation.	11/9/2010	11/29/2010
10-01	Petition of the State 911 Department for Approval of the Fiscal Year 2011 Development Grant Amount, and Fiscal Year 2010 Expenditures.	4/5/2010	4/25/2010
08-14	Time Warner Cable Rate Proceeding regarding the communities served that are subject to rate regulation.	7/2/2010	7/22/2010
07-9	Compliance Order on Petition for investigation under Chapter 159, Section 14 of the Intrastate Access Rates Competitive Local Exchange Carriers	6/16/2010	7/6/2010
01-34	Investigation by the Department of Telecommunications and Energy on its own motion, pursuant to G.L. c. 159, §§ 12 and 16, into Verizon New England Inc. d/b/a Verizon Massachusetts' provision of Special Access Services.	9/24/2010	10/4/2010
10-SL-01	Complaint of Sylvia Avila, filed with the Department of Telecommunications and Cable pursuant to G. L. c. 93, §§ 108 et seq., alleging an unauthorized switch of local toll and long-distance service provider to TeleUno, Inc.	2/8/2010	2/28/2010



Docket No.	Caption	Date Order Issued	Date Closed
09-11	Time Warner Cable Rate Proceeding regarding the communities served that are subject to rate regulation.	12/15/2010	1/6/2011
09-2	Application of BLC Management, LLC d/b/a Angles Communication Solutions for Certification as an Eligible Telecommunications Carrier.	8/23/2010	Now on appeal at SJC Doc. No. 2010-0418
09-10	Petition of the State 911 Department for approval of the release of Captioned Telephone Relay Service Provider Request for Response (State 911 10-003) pursuant to Section 15E(e) of Chapter 166 of the General Laws.	9/25/10	10/15/2010

## Appendix B

### 2010 Consumer Division Telecommunications & Cable Statistics

Industry	Company	Case	Referral	Nuance	Adjust
<b>Cable:</b>	Charter Cable	72	37	211	\$1,194.17
	Comcast	1088	1404	10140	\$46,719.73
	Other Cable	3	2	103	\$0.00
	RCN Cable	88	257	1390	\$2,408.80
	Russell Cable	1	0	7	\$0.00
	Time Warner Cable	23	42	383	\$492.24
	<b>Total:</b>	<b>1275</b>	<b>1742</b>	<b>12234</b>	<b>\$50,814.94</b>
<b>Telecommunications:</b>	01 Communications of Massachusetts, LLC	1	0	0	\$2,557.00
	ACN1	2	5	0	\$0.00
	Advantage Telecommunications, Inc.	1	1	0	\$431.05
	America's Tele-Network, Corp.	0	9	0	\$0.00
	AT&T	115	72	429	\$7,824.60
	Broadview Networks	13	0	0	\$1,915.52
	Chartel (Charter Fiberlink Telecom)	9	2	0	\$195.00
	Choice One Communications	0	1	0	\$0.00
	Comcast Phone, LLC	49	18	56	\$1,947.52
	Communications Network Billing	1	0	0	\$0.00
	Consumer Telecom, Inc	1	0	0	\$0.00
	Cordia Communications Corp.	22	35	0	\$336.15
	Digizip.com	1	0	0	\$94.48
	DSCI Corporation	1	1	0	\$0.00
	Enhanced Services Billing, Inc.	16	3	0	\$1,429.65
	Evercom Systems, Inc.	1	1	0	\$50.00
	Fairpoint Communications	1	0	0	\$293.47
	FCC	0	19	0	\$0.00
	First Communications, LLC	1	0	0	\$58.90
	Global TeK	0	1	0	\$0.00
	GLOBAL Tel*Link Corporation (GTL)	21	0	0	\$27.00
	GlobCom, INC	0	1	0	\$0.00
	Granby Telephone Company	2	5	16	\$0.00
	HOLD BILLING	5	1	0	\$139.80
	IDT Corporation	6	9	0	\$30.00
	ILD - Evercom - Talton - Invision	10	4	0	\$264.83
	IMR Telecom	1	2	0	\$5.00

Industry	Company	Case	Referral	Nuance	Adjust
	INCOMNET COMM.CORP.	0	1	0	\$0.00
	Inmark, Inc. - Preferred Billing	1	0	0	\$153.83
	INTEGRETEL	0	0	0	\$0.00
	legacy Long Distance International Inc.	1	0	0	\$189.83
	Legent Communications Corp.dba/Long Distance America	2	0	0	\$0.00
	Level 3 Communications LLC	0	0	0	\$0.00
	Lifeline	23	11	0	\$0.00
	Long Distance Access	1	0	0	\$0.00
	Long Distance Consolidated Billing Company	1	0	0	\$31.69
	Massachusetts Local Telephone Company, Inc.	1	1	0	\$0.00
	Matrix Telecom, Inc .	0	1	0	\$0.00
	MCI-Agency Relations	2	1	11	\$1,700.41
	Metropolitan Telecommunications	1	0	0	\$0.00
	Multiline Long Distance	5	0	0	\$148.67
	Net One	1	0	0	\$0.00
	NEW HORIZON COMMUNICATIONS CORP.	1	0	0	\$0.00
	Northstar	1	3	0	\$0.00
	One Communications	38	47	0	\$18,420.24
	One Link Communications	1	0	0	\$244.14
	One Touch Communications	7	5	0	\$0.00
	One Touch Communications dba Spectrotel	1	1	0	\$27.62
	OPERATOR ASSISTANCE NETWORK	18	1	0	\$451.60
	Other COCOTS	1	2	0	\$0.00
	OTHER TELEPHONE CO.	22	13	0	\$175.17
	PaeTec Communications, Inc.	0	1	0	\$0.00
	PaymentOne	9	0	0	\$283.09
	Plan B Communications, Inc. d/b/a Spectrotel	1	1	0	\$0.00
	Primo Communications	0	1	0	\$0.00
	Primus Telecommunications, Inc.	0	6	0	\$0.00
	QCC	1	0	0	\$0.00
	Qwest Communications	3	1	0	\$18.33
	RCN Telephone	25	18	0	\$970.38
	Reliant Communications, Inc	1	0	0	\$79.81
	Richmond Networx	1	0	0	\$0.00
	Richmond Telephone Company	4	0	0	\$0.00
	SafeLink by TracFone	215	75	0	\$0.00
	Silv Communications Inc.	0	0	0	\$0.00
	Spectrotel, Inc.	1	1	0	\$0.00
	SPRINT	8	3	24	\$0.00
	Startec Global Communications	1	0	0	\$13.11

Industry	Company	Case	Referral	Nuance	Adjust
	SURFTONE	3	0	0	\$297.09
	Tracfone	0	2	0	\$0.00
	Taconic Telephone Corp.	0	1	6	\$0.00
	Teleuno, Inc.	6	0	0	\$1,015.12
	Touch One Communications	1	0	0	\$0.00
	Transaction Clearinghouse	10	1	0	\$168.56
	Twin City Capital, L.L.C	2	0	0	\$85.37
	U.S. TELECOM LONG DISTANCE	2	0	0	\$126.79
	United Systems Access Telecom, Inc	1	0	0	\$0.00
	US Cellular	1	0	0	\$0.00
	USBI	14	2	0	\$67.51
	VERIZON	1031	1242	5286	\$78,905.66
	WilTel Communications, LLC	1	0	0	\$0.00
	WorldCom Network Services, Inc	1	0	0	\$0.00
	WORLDXChange CORP dba Acceris Communication	1	0	0	\$0.00
	XO Communications, Inc.	4	0	0	\$6,874.69
	Zero Plus Dialing	1	0	0	\$305.51
	ZEROPLUS aka ZPDI	2	2	0	\$25.14
	No Company Name Assigned	0	1021	0	\$0.00
	<b>Total:</b>	<b>1760</b>	<b>2655</b>	<b>5828</b>	<b>\$128,379.33</b>
	<b>Grand Total:</b>	<b>3035</b>	<b>4397</b>	<b>18062</b>	<b>\$179,194.27</b>

## Appendix C

### 2010 Consumer Division Energy Statistics

Industry	Company	Case	Referral	Nuance	Adjust
<b>Electric:</b>	NATIONAL GRID(Massachusetts Electric)	0	13	611	\$0.00
	NORTHEAST UTILITIES (Western Massachusetts Electric)	0	28	263	\$0.00
	NSTAR(Boston Edison)	0	38	472	\$0.00
	NSTAR(Commonwealth Electric)	0	0	0	\$0.00
	<b>Total:</b>	<b>0</b>	<b>79</b>	<b>1346</b>	<b>\$0.00</b>
<b>Municipal Electric:</b>	CHICOPEE Municipal Electric	0	2	54	\$0.00
	Norwood Municipal Light and Cable	1	1	7	\$0.00
	Reading Municipal Electric	0	1	2	\$0.00
	<b>Total:</b>	<b>1</b>	<b>4</b>	<b>63</b>	<b>\$0.00</b>
<b>Gas:</b>	Berkshire Gas	0	3	61	\$0.00
	Keyspan (Boston Gas)	0	33	68	\$0.00
	New England Gas (No. Attleboro Gas)	0	1	0	\$0.00
	New England Gas (Fall River Gas)	0	1	56	\$0.00
	NISOURCE (Bay State Gas)	0	7	37	\$0.00
	NSTAR (Commonwealth Gas)	0	1	0	\$0.00
	UNITIL (Fitchburg Gas & Electric)	0	1	126	\$0.00
	<b>Total:</b>	<b>0</b>	<b>47</b>	<b>348</b>	<b>\$0.00</b>
<b>Municipal Gas:</b>	Westfield Municipal Gas	0	3	0	\$0.00
	<b>Total:</b>	<b>0</b>	<b>3</b>	<b>0</b>	<b>\$0.00</b>
<b>Supplier:</b>	Dominion Retail Inc.	0	1	0	\$0.00
	Until Resources	0	1	0	\$0.00
	<b>Total:</b>	<b>0</b>	<b>2</b>	<b>0</b>	<b>\$0.00</b>
<b>Water:</b>	Aqua Water Company	0	2	20	\$0.00
	Barnstable Water Supply	0	1	9	\$0.00
	<b>Total:</b>	<b>0</b>	<b>3</b>	<b>29</b>	<b>\$0.00</b>
<b>DPU/Energy</b>		1	972		

Industry	Company	Case	Referral	Nuance	Adjust
Not Applicable:		200	151	0	\$2,853.47
Unregulated:		15	13	0	\$0.00
Unknown:		18	1	0	\$0.00
	Total:	234	1137	0	\$2,853.47
	Grand Total:	235	1275	1786	\$2,853.47
	Total for all Industries:	3270	5672	19848	\$182,047.74

## Appendix D

### 2010 Department FCC Filings

Note: All Department filings are available through the Department, as well as through the FCC's publicly-accessible Electronic Comment Filing System, which is available online.

This list does not include requisite annual certifications and filings.

Date Filed	Filed As	FCC Docket	Filing Type	Filing Description
11/24/10	DTC	CSR-8373-N	Reply Comments	The Department opposed a Rhode Island broadcast station's request for the FCC to waive the significantly viewed station exception to the nonduplication rule for WBZ-TV in Fall River and a portion of Easton.
10/05/10	DTC	GN 10-159	Reply Comments	The Department offered comment to the FCC's inquiry as to whether affordability should be a component of determining whether advanced telecommunications capability is available to all Americans as a part of the FCC's annual 706 assessment.
08/16/10	DTC	WC 07-245; GN 09-51	Comments	The Department responded to a Pole Attachment Order and Further Notice of Proposed Rulemaking, where the FCC clarified the existing federal statutory pole attachment obligations and invited comment on several pole attachment proposals.
08/16/10	DTC	ET 04-35; WC 05-271; GN 09-47; GN 09-51; GN 09-137	Reply Comments	The Department responded to initial comments filed and to Bureau inquiries regarding whether mandatory outage reporting requirements should be imposed on broadband ISPs and interconnected VoIP providers.
08/12/10	DTC	GN 10-127	Reply Comments	The Department responded to a Notice of Inquiry regarding the proper legal framework for broadband Internet service.
07/30/10	DTC	WC 03-109 CC 96-45	Reply Comments	The Department responded to a USF Joint Board request for comment on possible USF low-income revisions to eligibility, verification, and outreach.
07/19/10	Joint	CG 09-158	Reply Comments	The Department filed reply comments jointly with the Attorney General's Office addressing wireless consumer alerts, bill shock, and other wireless consumer protection issues.

Date Filed	Filed As	FCC Docket	Filing Type	Filing Description
07/12/10	DTC	WC 10-90 GN 09-51 WC 05-337	Comments	The Department filed comments responding to a Notice of Inquiry and Notice of Proposed Rulemaking on reform of the high-cost portion of the Universal Service Fund, as well as a proposed Connect America Fund.
7/6/2010	Joint	CG 09-158	Comments	The Department filed comments jointly with the Attorney General's Office addressing wireless consumer alerts, bill shock, and other wireless consumer protection issues.
4/20/2010	DTC	GN 10-66 <i>et al.</i>	Ex Parte	The Department submitted its Competition Status Report to the Commission for informational purposes.
4/9/2010	DTC	WC 03-109	Comments	The Department filed comments discussing the appropriate interpretation of Line 9 of FCC Form 497, which is filed by carriers for reimbursement under the USF low-income programs.
4/2/2010	DTC	CC 02-6	Comments	The Department offered recommendations to proposals under the USF E-Rate program.
3/4/2010	DTC	ET 04-35 RM 11588	Comments	The Department offered support to a California PUC Petition for Rulemaking asking the Commission to grant state public utility commissions access to the FCC's Network Outage Reporting System database.
1/28/2010	DTC	WC 05-337 CC 96-45	Comments	The Department offered comment relating to an Appeals Court remand ( <i>Qwest II</i> ) involving non-rural carriers under the USF high-cost fund.
1/19/2010	DTC	WC 05-25 RM 10593	Comments	The Department offered comment relating to special access inquiries.
01/08/10	DTC	CC 96-45	Ex Parte Comments	The Department urged the FCC to postpone its decision on a TracFone audit request pending a final DTC order in a similar investigation.